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July 20, 2007

Hon. Curtis S. Person, Jr.  
Juvenile Court of Memphis & Shelby County  
616 Adams Ave.  
Memphis, TN 38105

Dear Judge Person,

Enclosed is the Memphis Bar Association's report and recommendations regarding Juvenile Court. These recommendations are the product of a Juvenile Court Task Force created by the MBA to consider changes in the court's current operation.

Our intent is to provide constructive feedback to the court from the lawyers' perspective. We applaud the efforts already underway to address many of the concerns covered by the recommendations, and offer our assistance to the court in implementing the recommended changes.

If you would like to discuss the report and recommendations in greater detail, please contact MBA Executive Director Anne Fritz (527-3573; [afritz@memphisbar.org](mailto:afritz@memphisbar.org)) so she can arrange a meeting with the MBA officers and members of the Task Force.

Sincerely,

David M. Cook,  
President

cc: Larry Scroggs  
Members of the Shelby County Commission  
MBA officers

**RECOMMENDATIONS OF THE MEMPHIS BAR ASSOCIATION  
CONCERNING JUVENILE COURT**

**Adopted by the MBA Board of Directors on June 28, 2007**

**I. History and Purpose**

The Memphis Bar Association created a Juvenile Court Task Force to elicit input from lawyers who regularly practice at Juvenile Court. Task Force members were solicited from agencies or organizations who have a special interest in or whose members regularly practice in Juvenile Court. They included the Criminal Law, Family Law, and Sole/Small Firm Sections of the Memphis Bar Association; Memphis Area Legal Services and the Community Legal Center; the District Attorney General's and the Public Defender's offices; the MBA's Access to Justice Committee; the Association for Women Attorneys and the Ben F. Jones Chapter of the National Bar Association; and the Department of Children's Services.

After receiving input from their constituencies and reviewing the recommendations of the Shelby County Commission's Ad Hoc Committee on Juvenile Court, the Task Force submitted its report and recommendations to the MBA Board of Directors. The MBA Board considered the Task Force's report at its June 28<sup>th</sup> meeting and subsequently adopted the following recommendations.

**II. Recommendations**

The MBA noted the efforts already underway at Juvenile Court to address many of the issues encompassed by these recommendations, and commends Judge Curtis Person and his staff for their proactive approach. The MBA Force applauds their efforts and urges them to continue initiatives to make Juvenile Court more accessible, transparent, and user-friendly.

In formulating its recommendations, the MBA focused on three key areas: structure, access to justice, and due process/fairness, with the focus on how the current system, and any recommended changes, impacts the manner in which a lawyer practices in Juvenile Court. The MBA's recommendations are divided according to those three areas.

**A. Structure**

**Recommendation #1: Referees should be replaced with judges.**

The MBA believes that judges in Juvenile Court should act as judges, not administrators. Replacing referees with judges would speed up the process by eliminating the need for a rehearing by the judge of a referee's decision. The MBA believes that a change from referees to judges would not require a repeal of the current statute authorizing the appointment of referees. Referees could still be used as "special masters" in child support and other hearings. Creation of additional judgeships would require legislation by the Tennessee General Assembly.

**Recommendation #2: Judges and referees should not be limited in the types of matters they hear.**

The MBA does not support the County Commission's recommendations to move two referees to hearing child support cases only and to divide the referees' responsibilities between delinquency cases and domestic relations matters (child support/custody/visitation, abuse and neglect, etc.) The TMBA believes that any division or limitation of responsibilities, given the current staffing levels, would create a greater backlog of cases and increased delays in hearing cases. Currently, if a referee is out due to sickness, the other referees can pick up the slack. Under the County Commission's recommendation, if one of the two referees hearing child support matters is out sick, only one other referee would be available to hear those cases, resulting in more delay.

The MBA believes that division of responsibilities is feasible only if additional judgeships or referee



positions are created.

**Recommendation #3: Remove the Juvenile Defender's Office from the Juvenile Court Judge's supervisory authority and continue efforts to distance the Guardian ad Litem, the probation staff, and the Juvenile Detention Center.**

The MBA commends Judge Person's efforts to distance the court from its supervisory authority over these other areas. However, it is troubled by the potential, if not actual, conflict that may arise from the judge having ultimate authority over these areas. In addition, as stated above, the MBA believes that the Juvenile Court judge(s) should not be placed in the position of being administrators, but instead, should use their skill and expertise as judges.

The MBA finds the greatest potential for conflict with the Juvenile Defender's office. The MBA therefore recommends that the Juvenile Defender's Office become either an independent agency or part of the Shelby County Public Defender's Office. Whether the Juvenile Defender's office is placed under the Public Defender's office or becomes an independent agency, the MBA urges the County Commission to provide the financial resources necessary to ensure that it is fully staffed and funded to meet the needs of juveniles charged with delinquency.

The MBA also was troubled by probation officers drafting petitions and orders on behalf of pro se litigants, which may constitute the unauthorized practice of law, and felt that it would be better to have an attorney overseeing the probation officers, who could then supervise the filing of petitions and drafting of orders on behalf of pro se litigants.

**Recommendation #4: Hire an investigator(s) for the Juvenile Defender's Office**

Whether or not the Juvenile Defender's office comes under the auspices of the Public Defender's Office, investigators are needed to assist the private attorneys who handle delinquency cases. Currently there are no investigators for Juvenile Court, placing the burden of investigation on the private attorneys.

**Recommendation #5: Create a drug court, gun court, and teen court.**

The MBA supports the County Commission's recommendations to create a youth drug court, modeled on the drug court run by General Sessions Judge Tim Dwyer, and a gun court. The Task Force also proposes a teen court for non-violent juvenile offenders, in which teens would act as prosecutor, defense attorney, and jury.

**B. Access to Justice**

**Recommendation #6: Streamline the system to reduce multiple filings and court appearances in the same case.**

Although the MBA was not in favor of the County Commission's "one family, one judge" recommendation, it encourages efforts to reduce the necessity to file for child support and visitation in separate places and to appear in different courts on those issues.

**Recommendation #7: Take steps to reduce the backlog of cases.**

The MBA noted that it often takes several months for adjudication hearing and even longer to obtain a date for rehearing. Adjudication hearings should be held within the state-mandated 30-day period, unless waived by the parties. The Task Force recognizes that additional staff may be needed to reach this goal, and supports the hiring of more people so adjudications and other matters can be heard on a timelier basis.

**Recommendation #8: Notify parents of their right to counsel and expand the advocate**

**program for non-custodial parents.**

The MBA was concerned that not all indigent parents in dependency and neglect cases are informed of their right to counsel, especially if the Department of Children's Services is not involved. The MBA urges the court to take steps to insure that all indigent parents are informed of that fundamental right. Concern also was raised that counsel may not be appointed promptly for indigent parents who are facing termination of their parental rights.

The MBA strongly supports the work of the non-custodial parent advocate, but believes additional help is needed to meet the demand.

**Recommendation #9: Recruit more attorneys for the Juvenile Defender and GAL programs.**

Concern was expressed that the process for applying for and being selected as a Juvenile Defender or GAL is not open and transparent. The MBA is willing to work with Juvenile Court to insure that this process is open and to recruit qualified attorneys to serve on these panels. In addition, the Task Force recommends creation of an evaluation system for attorneys who serve on those panels.

**Recommendation #10: Use technology to educate and inform the public and attorneys about Juvenile Court procedures.**

The MBA supports efforts to put forms and information, both for the public and practitioners, online.

**C. Due Process/Fairness**

**Recommendation #11: Ensure that notice of court dates to all parties, whether represented or pro se, is correct and timely.**

**Recommendation #12: Include contact information in all GAL and CASA appointment orders.**

**Recommendation #13: Preserve records of proceedings in delinquency cases for longer than a year, at least through the appeals process or until the juvenile reaches age 18.**

The MBA suggests that Juvenile Court consider hiring at least one full-time court reporter to ensure that records of proceedings are properly preserved.

**Recommendation #14: Include specific findings of fact in all adjudicatory orders.**

**Recommendation #15: Permit the Juvenile Defenders more time to prepare cases before transfer hearings and adjudications.** Seven days is not sufficient, especially since the Juvenile Defenders' office has no investigators on staff.

**Recommendation #16: Cease the practice of allowing probation officers to interview juveniles before the juvenile's attorney is notified.**

**D. Other**

**Recommendation #17: Increase awareness among the Bar of disproportionate minority contact with the juvenile justice system and the ways to alleviate that situation.**